No. 4245

IN THE

United States

Circuit Court of Appeals

For the Ninth Circuit.

AUK BAY SALMON CANNING COMPANY, a Corporation,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Upon Writ of Error to the United States District Court of the Territory of Alaska, Division Number One.

BRIEF OF DEFENDANT IN ERROR.

A. G. SHOUP,
United States Attorney,
For Defendant in Error.

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AUK BAY SALMON CANNING COMPANY, a Corporation,

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Brief of Defendant in Error.

The case is stated in the brief for the plaintiff in error.

MOTION TO QUASH.

Before pleading defendant filed a Motion to Quash the Indictment (Transcript, p. 6), which motion was by the Court denied. One of the defendant's assignments of error is, that the Court erred in denying and refusing to grant its motion to quash the indictment.

Section 2191, Compiled Laws of Alaska 1913, provides the grounds for setting aside an indictment; it mentions only two, the first being when the indictment is not found, indorsed and presented

as prescribed in chapter 6 of the same title, and the second ground is when the names of the witnesses are not endorsed on the indictment, as provided therein. Section 2197, Compiled Laws of Alaska, provides that the only pleading on the part of the defendant shall be a demurrer or plea. These sections specify the grounds for which a demurrer will lie and these grounds, generally speaking, run only to the sufficiency of the indictment. Section 2208 states what pleas shall be entertained by the Court. These sections were all taken from the Laws of Oregon, and, of course, the construction of such statutes by the Supreme Court of Oregon will have great weight in the construction of these sections here. In the case of State vs. Gilliam, 124 Pac. 256, the Supreme Court of the State of Oregon held that under L. O. L., Section 1500, which authorized a plea of guilty or not guilty, or a former conviction or acquittal against an indictment, a plea in abatement is improper. The same Court in State v. Whitney, 7 Or. 386, said that, as this enactment limits the pleas that may be interposed to an indictment, it necessarily excluded all others, and therefore the motion to quash must be excluded under the Compiled Laws of Alaska. We submit that the motion to quash in this case should not be noticed.

I.

AUTHORITY OF THE LEGISLATURE TO PROVIDE ADDITIONAL PROTECTION FOR THE FISHERIES OF ALASKA.

The limitation in section 3 of the Organic Act

on the power of the legislature to amend, alter, modify or repeal the fish and game laws of the United States applicable to Alaska manifestly referred to the Acts of Congress for the protection of the fish and game in Alaska, and not to the general or common law. This is shown not only by the wording of the limitation itself, but by the contex of the general wording of section 3. However, where a statute is of doubtful construction, the Courts are entitled to consider the debates of Congress to determine exactly what was intended by the law-making body. U. S. vs. St. Paul etc. Ry. Co. et al, 62 L. Ed. Sup. Ct., page 1134. The phrase of the Organic Act of the Territory of Alaska from which it is contended that the Alaska legislature was without power to enact chapter 95 of the Territorial Session Laws of 1923, was inserted in the Act as an amendment while it was on its passage in the Committee of the Whole in the House of Representatives. The subject was fully debated, and the report of that debate (Cong. Record April 24, 1912, pp. 5278, 5284, *5288*), shows clearly that it was the conclusion of every member who took part in that debate that the amendment would operate only to prevent the territorial legislature from repealing or modifying laws of Congress then in force for the protection of the Alaska game and fish, but was no inhibition against the legislature passing additional restrictive laws. It was not the desire or intention of Congress to limit the legislature's power to further protect the game and fish of Alaska, and the hope was expressed

that the territorial legislature would do that very thing. Mr. Flood, of Virginia, the Chairman of the Committee that reported the bill, agreed with the proponents of the amendments that they would not prevent the legislature from passing additional regulatory laws. The territorial legislature, by section 4 of chapter 95, disclaimed any purpose on its part to alter, to amend, to modify, or to repeal any of the fish laws of the United States applicable to Alaska, but provided that chapter 95 should be construed to provide for further and additional protection to the fisheries of Alaska.

When Congress refused to extend to the legislature of Alaska unlimited authority over the fisheries, it was due to the fear, clearly expressed, that the new legislature might not impose upon the right to fish, such protection as would be sufficient to prevent depletion of the fishing grounds and thus permit the industry to be destroyed.

When the creation of the new legislature came up for discussion, Congress had already enacted certain restrictions designed to protect the future of the fishing industry. This protection Congress did not want torn down. It was, therefore, provided in the Organic Act that the new legislature should have no authority to modify these restrictions. That idea was expressed in section 3. If Congress had intended to restrain the legislature from exercising any jurisdiction whatever over the fisheries, that idea would have been expressed also.

In Alaska Fish Salting and By-Products Co. v. Smith, 255 U. S. 44, the Supreme Court took the

position that if the legislature thought it necessary for the protection of the Herring Fisheries to limit or even to prohibit the catching of herring for certain purposes, it had authority to do so. In that case, the taxing power was employed. But no reason presents itself why the general police power might not be employed for the same purpose.

The Court distinctly approved of the authority of the legislature to impose restrictions in addition to those imposed by Congress.

The "common right of fishery" is a common-law right. The restrictions imposed by Congress are intended to express the minimum restrictions under which Congress would permit fishing in Alaska, thus leaving it optional with the legislature to impose additional safeguards for the perpetuation of the industry.

This theory finds support not only in the report of the debates over the Organic Act when that measure was before the House, and in the decision of the Supreme Court above cited, but in analogous principles announced by the House of Representatives in the first contest of Wickersham vs. Sulzer, and by the Court of Appeals in Northmore vs. Simmons, 97 Fed. 386.

Congress had enacted a complete code prescribing rules and regulations for elections in Alaska, including a form for a ballot. In 1915, the legislature enacted a law prescribing additional rules for safeguarding the free expression of the public sentiment at the polls. The contestant took the position that this law transcended the authority of the legis-

lature, because Congress had already prescribed how elections were to be conducted.

The House of Representatives decided that the rules prescribed by Congress were the minimum restrictions tolerated by Congress and that the legislature had authority to enact additional restrictions. But it was also decided that the change in the qualifications of voters embodied in the territorial law was void, because it did not restrict but did expand the qualifications.

In the Northmore case it was decided that local regulations which only restricted the rights extended by Congress were not in conflict with the Congressional Act fixing restrictions under which mining claims might be located and held.

It should be noted that the courts have been ever extremely liberal in construing the power granted to territorial legislatures. Unless it appears very plainly that it was not the intent to delegate a power, it is presumed as having been granted under the authority to legislate on all "rightful subjects."

Let it also be remembered that Congress by its regulation of fisheries assumed to grant no right, but only assumed to restrict a right which already existed as a matter of common law. Additional restrictions, therefore, abridge no right bestowed by Congress and conflict with no Congressional enactment.

The fish are the property of the people of the territory. It must be assumed, therefore, that it was the intent of Congress to permit the people to manage their own property, except to the extent

that limitation on that power was expressed in the Organic Act.

McCready vs. Virginia, 94 U. S. 391.
Corfield vs. Coryell, 6 Fed. Cas. 3231,
Bennett vs. Boggs, 3 Fed. Cas. 1319.
State vs. Medbury, 3 R. I. 141.
State vs. Corson, 67 N. J. L. 185.
Haney vs. Compton, 36 N. J. L. 509.
Meul vs. People, 64 N. E. 1106.

The case of Betsch vs. Umphrey, 270 Fed. 45, is cited in support of the contention that the territorial legislature could prescribe no additional regulations touching a subject upon which Congress had already legislated. That case dealt directly, as counsel say, with the organic provision that the territorial legislature could pass no law interfering with the primary disposal of the soil. It in no way abrogates the rule laid down in the Northmore case, *supra,* but affirms the rule that if the required annual assessment work on mining claims is done in fact, title will not lapse because of a failure to record the affidavit. The Betsch case does not say that *additional work* cannot be required by the state or territory.

The recent passage by congress of the so-called White Bill for the protection of Alaska fisheries, we believe, strengthens the theory that Congress did not intend that the restriction in section 3 of the Territorial Organic Act would prevent the territory from providing additional protection to the fisheries of Alaska. Section 7 of the new law pro-

vides, among other things, that "all penalties, forfeitures, or liabilities incurred prior to taking effect hereof, under any law embraced in, changed, modified, or repealed by this Act, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed".

Then, just before the final passage of the bill, Congress added a new section (8) as follows:

> "Section Eight. Nothing in this act contained nor any powers herein conferred upon the Secretary of Commerce, shall abrogate or curtail the powers granted the Territorial Legislature of Alaska, to impose taxes or licenses, nor limit or curtail any powers granted the Territorial Legislature of Alaska by the Act of Congress approved August 24th, 1912, to create a Legislative Assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes."

The Territorial Legislative Act (Ch. 95, S. L. 1924) had been submitted to Congress soon after its approval by the Governor, and Congress manifestly had that law in mind when it enacted the provisions just quoted.

It may be said that the new law does not repeal the Territorial Act involved in the case at bar, but we are inclined to think it does. When the same matter is the subject of legislation by Congress and a territorial Legislature, the acts of Congress supersede those of a Territorial Legislature.

Clayton vs. Utah, 132 U. S. 632.
Davis vs. Broson, 133 U. S. 333.
El Paso etc. R. R. Co. vs. Gutierrez, 215 U. S. 87.
Mark vs. Dist. Columbia, 37 L. R. A. (N. S.) 440.
See also Brunswick First Natl. Bank vs. Yankton County, 101 U. S. 129.

II.

LOCAL LEGISLATION.

It is contended by the defendant, that chapter 95 of the Alaska Territorial Session Laws of 1923 is in contravention of the so-called Springer Law of July 30, 1886, which is specifically made a part of the Organic Act of Alaska, and which prohibits the passage by the territorial legislature of any local or special law in certain enumerated cases, one of which is for the protection of game and fish.

If it is conceded that Congress intended to grant the territorial legislature some police power over the game and fish of Alaska, it then becomes necessary to inquire what is meant by the phrase "local or special law" when applied to the game and fish of the territory. If it means that the words "local laws" intend that the territorial legislature could pass no law for the protection of the game or fish where it did not operate exactly the same in every part of the vast domain of Alaska, without consideration of the habits of the various species of game and fishes in different sections; without regard to the sharp contrast of seasons and the es-

sential differences of conditions regarding the fisheries of one part of Alaska with another; without regard to any of the very many reasons why a game or fish law could not operate uniformly throughout that immense region and still serve a practical purpose, then such grant of police power is without practical benefit to the people and it would be futile for the legislature to attempt to protect or preserve the game or fish of the territory. Every law that has ever been passed for the protection of the game or fish of Alaska has had regional application.

Going back only to the law of June 26, 1906, which was the last law passed by Congress for the protection of the Alaska salmon fisheries, until the law of June, 1924, we find a weekly closed season for taking salmon in any of the waters of Alaska *except Cook Inlet, the Delta of the Copper River, Behring Sea and the waters tributary thereto.* The exception was made for practical purposes because of peculiar conditions existing at those places. The closed seasons for hunting game are different in different parts of the Territory. The habits of salmon in Alaska are very similar to the habits of salmon in the State of Oregon in respect to their approaching the spawning grounds in different localities at different seasons. The subject of the habits of salmon in the spawning season is ably discussed in the case of Portland Fish Co. et al. vs. Benson et al., 108 Pac. 122.

We submit that the term "local law" when applied to a law for the protection of fish or game

does not necessarily mean a law that operates in every part of the legislative jurisdiction. But we think a local law for the protection of the game or fish is a law that protects the fish or game for the benefit of the people of a restricted locality, but a law is not local which prohibits fishing in a specified part of the territory where the salmon are spawning, and applies to the persons residing in such closed zone exactly as it does to everyone else in the territory and is designed to protect the salmon for the general welfare of all the people of the territory, whether they happen to live within the closed zone or not. Chapter 95 is not local merely because it is operative only in that part of the territory where the conditions necessary for its operation exist. It creates no monopoly in anyone nor does it confer any special privileges. The justification for this law is the necessity of the preservation of the fish.

Judge Wolverton in the case of Ladd vs. Holmes (66 Pac. 716), defined the rule by which it is to be determined whether a law is local or general, even though it have but a local application, as follows:

> "A law may be general, however, and have but a local application, and it is none the less general and uniform, because it may apply to a designated class, if it operates equally upon all the subjects within the class for which the rule is adopted; and, in determining whether a law is general or special, the Court will look to its substance and necessary operation, as well

as to its form and phraseology. People vs. Hoffman, 116 Ill. 587, 5 N. E. 596, 8 N. E. 788, 56 Am. Rep. 793; Nichols vs. Walter (Minn.) 33 N. W. 800. This is the accepted rule everywhere.

"Referring to a provision in the constitution of North Dakota of similiar import to the one here invoked, Mr. Chief Justice Corliss says: 'To say that no classification can be made under such an article would make it one of the most pernicious provisions ever made in the fundamental law in the state. It would paralyze the legislative will. It would beget a worse evil than unlimited legislation,—grouping together without homegeneity of the most incongruous objects under the scope of an all-embracing law.' Edmonds vs. Herbrandson, 2 N. D. 970, 971, 14 L. R. A. 725, 727. The greater difficulty centers about the classification. It may not be arbitrary, and requires something more than a mere designation by such characteristics as will serve to classify. The mark of distinction must be something of substance, some attendant or inherent peculiarity calling for legislation suggested by natural reason of different character to subserve the rightful demands of governmental needs. So that, when objects and places become the subject of legislative action, and it is sought to include some and exclude others, the inquiry should be whether the distinctive characteristics upon which it is proposed to found different treatment are such

as in the nature of things will denote in some reasonable degree a practical and real basis for discrimination. Suth. St. Const., secs. 127, 128; Nichols vs. Walter, *supra;* Edmonds vs. Herbrandson, *supra;* Richards vs. Hammer, 42 N. J. Law, 435; People vs. Board of Sup'rs of Adam Co., 185 Ill. 288, 56 N. E. 1044. Accordingly it was held that a law general in its scope, framed upon a classification governed by these distinctive principles, is not special or local because there happens to be but one individual of the class, or one place in which it has actual and practical operation. Van Riper vs. Parsons, 40 N. J. Law, 1; s. c. (second appeal), 40 N. J. Law, 123, 29 Am. Rep. 210. A statute, however, which is plainly intended to affect a particular person or thing, or to become operative in a particular place or locality, and looks to no broader or enlarged application, may be aptly characterized as special and local, and falls within the inhibition."

Judge Bean said in the case of State vs. Savage (184 Pac. 570) that:

"The equality clause only requires that the law, when impartially applied, shall operate equally and uniformly upon all persons in similiar circumstances, and confers like privileges to all who may comply with its terms or come without its provisions. It does not prohibit legislation which is limited either in the objects in which it is directed, *or by the terri-*

tory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like conditions."

Harwood vs. Wentworth, 162 U. S. 547; 16 Sup. Ct. 890.
25 R. C. L. 814, 816.
12 C. J., p. 1118, sec. 835.
Gray vs. Taylor, 227 U. S. 51,
Arms vs. Ayer, 61 N. E. 855.
Potwin vs. Johnson, 108 Ill. 70.
Ex parte Fritz, 38 So. 725.
Long vs. State, 92 N. E. 653,
Allen vs. Hersch, 8 Ore. 425,
State vs. Borough Summers Pt., 18 Atl. 694.
Douglas vs. People ex rel. Ruddy, 80 N. E. 341.

III.

CLASS LEGISLATION.

It is argued that chapter 95, Alaska Session Laws of 1923, is contrary to the Organic Act of Alaska, and particularly to section 9 thereof, in that, without the affirmative approval of Congress, it grants to certain corporations, associations and individuals certain special and exclusive immunities, privileges and franchises; that it is contrary to the Constitution and violates the equal protection of the laws clause of the Fourteenth Amendment; that it abridges the privileges and immunities of citizens and violates the due process of law clause of the Fifth and Fourteenth Amendments of the Constitution.

Chapter 95 is copied substantially from the laws of the State of Washington which were construed in the case of State vs. Tice (125 Pac. 168), in which it was said that the section regulating the fishing for salmon and making a different closed season in different waters of the state is not class legislation, or arbitrary or unreasonable, as it affects equally and impartially all persons similarly situated. The Court in the Tice case referred to the early case of Hayes vs. Territory (2 Wash Ter. 286, 5 Pac. 927), in which it was said that a game law does not confer a "special privilege" because restricted in its operation to five counties.

In the case of Sherrill vs. State (106 S. W. 967), the Court said: "The statute prohibiting the use of fish traps in any waters of the state, except in certain counties, is not unconstitutional because granting to the citizens of such counties privileges and immunities not extended equally to all other citizens, since the legislature may, in the exercise of its police power, put into operation game and fish laws in localities where they are needed, and such laws apply in such localities to all persons equally."

We submit that chapter 95 is not void as class legislation because the closed season is limited to waters where such closed season can be made practical and operative and does not apply to other waters where such a closed season would operate against the very purpose for which the law was enacted. Individuals have no inherent or other property rights in the fish in their natural state

but the fish belong to the Government and Territory as trustees for the people of the future state. Private persons or corporations cannot complain of laws that are designed to protect the fish for the benefit and general welfare of all the people.

State vs. Catholic (Ore.), 147 Pac. 372.
Osborn vs. Charlevoix, Cir. Judge, 72 N. W. 982 (Mich.); 26 C. J. 625.
McCready vs. Virginia, 94 U. S. 391.
Ashon vs. Board of Commrs. for Protection of Birds, etc., 185 Fed. 221.
State vs. Hanlon (Ohio), 82 N. E. 662.
State vs. Savage, 184 Pac. 567 (Oregon).
National Bank vs. County of Yankton, 101 U. S. 129, 133.
Simms vs. Simms, 175 U. S. 162.

In Wagner vs. People, 97 Ill. 333, it is said: "The ownership being in the people of the state—the repository of the sovereign authority—and no individual having any property rights to be affected, it necessarily results that the Legislature, as the representative of the people of the state, may withhold or grant to individuals the right to hunt and kill game, or qualify or restrict it, as, in the opinion of the members, will best subserve the public welfare. Stated in other language, to hunt and kill game is a boon or privilege granted either expressly or impliedly by the sovereign authority, not a right inhering in each individual, and consequently nothing is taken away from the individual when he is denied the privilege at stated seasons of hunting and killing game. It is perhaps

accurate to say that the ownership of the sovereign authority is in trust for all the people of the state, and hence, by implication, it is the duty of the Legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use, in the future, to the people of the state. But in any view the question of individual enjoyment is one of public policy and not of private right."

"Tiedeman in his valuable work on State and Federal control of persons and property (vol. 2, sec. 151), says: 'Where the prohibition was limited to the killing of game and the catching of fish in the public lands and streams of the state, no possible question could arise as to the constitutionality of the regulation, for the reason that no one's rights of property could be violated in such case. THE RIGHT TO HUNT AND FISH IN SUCH CASE IS AT BEST ONLY A PRIVILEGE WHICH THE STATE MAY GRANT OR WITHHOLD AT ITS PLEASURE."

"While it is true, in a sense, that the right to fish is a common or general right, yet it is equally true that laws regulating the exercise of this right must of very necessity be local rather than general in their character, and hence they may, and should be, adapted to the various needs of different localities and waters."

Geer vs. Connecticut, 161 U. S. 519, 16 Sup. Ct. 600, 40 L. Ed. 793.

Hayes vs. Missouri, 120 U. S. 71, 7 Sup. Ct. 352, 30 L. Ed. 578.

Barbier vs. Connelly, 113 U. S. 27, 5 Sup. Ct. 357, 28 L. Ed. 923.

IV.

EXEMPTION OF TROLLERS.

Some point has been made of the fact that salmon trollers are exempt from the operation of Chapter 95, Territorial Session Laws of 1923. The record in this case, testimony of H. R. Thompson (transcript, pp. 19, 20, 21), discloses that an entirely different species of fish are caught by the trollers than are caught and canned by the cannery companies. The only fish taken by the trollers are the king salmon and cohoes and these are taken on the feeding grounds; that practically all king salmon are either shipped fresh or mild cured. Whereas, on the other hand, the salmon taken by canneries, with other gear than trolling, is mostly sockeye, humpback and dog salmon, and those fish are only caught when they are on the way to the spawning ground in the spawning season. Fish caught by trollers are taken at all seasons of the year and are never taken on the spawning grounds. It may be mentioned also that there is no discrimination in the law against salmon canners catching king salmon or cohoes during the closed season with trolling gear, if they so desire. The legislature could have specified the particular kind of salmon which could not be taken during the closed season, but the legislative intent is plain.

See State vs. Higgins, 38 L. R. A. (N. S.) 561.
State vs. Blanchard, 189 Pac. 421.
Re Berger, 3 L. R. A. (N. S.) 530, 90 S. W. 759.

V.

CRIME AGAINST UNITED STATES.

The defendant raised the point that neither the Act of August 24, 1912, nor the act of August 29, 1914, gave the territorial legislature any authority to enact laws constituting crimes against the United States. We submit that the Organic Act, approved August 29, 1914, answers that contention. That amendment reads as follows:

> "An Act to amend an Act entitled 'An Act creating a legislative assembly in the Territory of Alaska, and conferring legislative power thereon, and for other purposes,' approved August Twenty-fourth, nineteen hundred and twelve.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That nothing in the Act of Congress entitled 'An Act creating a legislative assembly in the Territory of Alaska and conferring legislative power thereon, and for other purposes,' approved August twenty-fourth, nineteen hundred and twelve, shall be so construed as to prevent the courts now existing or that may be hereafter created in said Territory from enforcing within their respective jurisdictions all laws passed by the legislature within the power conferred upon it, the same as if such laws were passed by congress, nor to prevent the legislature passing laws imposing additional duties, not inconsistent with the present duties of their respective

officers, upon the governor, marshals, deputy marshals, clerks of the district courts, and United States Commissioners acting as justices of the peace, judges of probate courts, recorders, and coroners, and providing the necessary expenses of performing such duties, and in the prosecuting of all crimes denounced by territorial laws the cost shall be paid the same as is now or may hereafter be provided by Act of Congress providing for the prosecution of criminal offenses in said Territory, except that in prosecutions growing out of any revenue law passed by the legislature the cost shall be paid as in civil actions and such prosecutions shall be in the name of the Territory."

VI.

TACIT APPROVAL.

Sec. 20, Organic Act: "That all laws passed by the Legislature of the Territory of Alaska shall be submitted to Congress by the President of the United States, and, if disapproved by Congress, they shall be null and of no effect."

In the case of Clinton vs. Englebrecht (13 Wall. 434), the Supreme Court, in the opinion delivered by Chief Justice Chase, laid down the doctrine or rule that when for a number of years Congress has taken no action on a Territorial law it is a reasonable inference that it has approved the law. That rule has been consistently followed by the Courts since. It will be assumed, in the absence of express disapproval that the act was considered as extending to a rightful subject of legislation not incon-

sistent with the Constitution or laws of the United States (Board of Trustees of Whitman College vs. Berryman, 156 Fed. 122).

The doctrine of tacit approval was emphasized in the case of Sawyer vs. El Paso & N. E. Ry. Co. (108 SW 718), in which the Court said:

> "The legislation of the Territory must not be in conflict with the laws of Congress conferring the power to legislate, BUT A VARIANCE FROM IT MAY BE SUPPOSED APPROVED BY THAT BODY IF SUFFERED TO REMAIN WITHOUT DISAPPROVAL FOR A SERIES OF YEARS AFTER BEING REPORTED TO IT."

Territory vs. Alaska Pac. Fisheries, 5 Alaska, 325.

U. S. vs. Miyata, 4 Alaska, 436.

Hampton vs. Columbia Canning Co., 3 Alaska, 100.

Shively vs. Bowldy, 152 U. S. 1.

The doctrine of tacit approval by Congress has application in the case at bar from the fact that the same limitation against altering and amending the fish laws of the United States applicable to Alaska exists as to the game laws, and both were inserted in the Organic Act as a part of the same amendatory provision. On April 29, 1915, Chapter 62 of the Session Laws of 1915, entitled "An Act to prevent the wanton destruction of game animals within the Territory of Alaska, and providing punishment therefor," was approved. That law is supplementary to the game laws of the United

States applicable to Alaska and is intended to afford a further protection to the deer and other wild food animals within the territory. It provides that anyone with intent to wantonly destroy said animals without making every effort to have such animal utilized for food shall be guilty of a misdemeanor and punished. The law further provides that any person who shall have knowledge of any violation of the Act and who shall fail to report the same to the authorities shall be guilty of a misdemeanor and shall be punished. This law was reported to Congress in 1915 and has never been disapproved, and may therefore be considered as approved.

Chapter 95 of the Session Laws of 1923 was submitted by the President to Congress soon after its passage and has not been disapproved by Congress.

CONCLUSIONS.

The passage of chapter 95 of the Alaska Session Laws of 1923, providing for further protection of the salmon fisheries of Alaska, was a rightful subject of legislation by the territorial legislature, so long as said chapter 95 did not alter, amend, modify or repeal the fish laws of the United States applicable to Alaska in force at the time of the approval of the Territorial Organic Act, on August 24, 1912.

Chapter 95 is not a local or special law for the protection of the fish. It was enacted in the general welfare of all the people of the territory for the preservation of the salmon while on the spawning grounds during a part of the spawning season, and confers no special privileges or immunities. It op-

erates equally upon all persons who come within the scope of the legislation.

The exemption of trolling fishing confers no special privilege because it permits the catching for commercial purposes of the nomadic king salmon on their feeding grounds.

Violations of chapter 95 are crimes against the United States under the provisions of the amendment to the Organic Act, approved August 29, 1914. The territorial legislature is a subordinate branch of Congress with delegated powers. The control of the Alaska fisheries is unified because Congress has complete power to amend or annul acts of the legislature.

This law and the game law of 1915 were both submitted to Congress and neither one was disapproved. It may, therefore, be assumed that Congress considers further protection of the fish and game a rightful subject of legislation by the territorial legislature, and also that Congress has tacitly approved chapter 95.

For the foregoing and other reasons, it is respectfully submitted that the judgment in the District Court should be affirmed. In any event, it is most important to all concerned that this case be decided before the beginning of the closed season on August 10th, 1924.

A. G. SHOUP,
United States Attorney.

Due service and receipt of a copy of the within is hereby admitted this —— day of June, 1924.

_____,
Attorney for Plaintiff in Error.